

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS**

IN RE:

RONALD E. EMIG,

Debtor.

No. 98-80271

MICHELLE L. EMIG,

Plaintiff,

vs.

Adv. No. 98-8061

RONALD E. EMIG,

Defendant.

OPINION

The Plaintiff/Creditor, Michelle L. Emig, (PLAINTIFF) and the Defendant/Debtor, Ronald E. Emig, (DEFENDANT) were married. Their state court marriage dissolution judgment divided the marital property and the DEFENDANT was ordered to pay child support and to pay the PLAINTIFF's attorney fees of \$2,400.00. When the DEFENDANT failed to pay the attorney fees, the PLAINTIFF's attorney, on three occasions, filed contempt of court charges against the DEFENDANT and was awarded \$270.00, \$270.00 and \$426.25 as additional attorney fees. The DEFENDANT then filed a Chapter 7 case in bankruptcy and the PLAINTIFF filed this adversary proceeding.

Before the Court are three issues involving the attorney fees arising out of the marriage dissolution. The first issue is whether the \$2,400.00 in attorney fees is dischargeable. In other cases, this Court has applied the rule that attorney fees follow the basic award, as well as the rule that in awarding fees the state court is required to look at the respective incomes of the parties and a determination that one party should bear the other's fees is in essence an award of support itself. Both rules usually lead to the same result.

In discussing the law, the court in *In re Smolenski*, 210 B.R. 780 (Bkrtcy.N.D.Ill. 1997), stated:

Generally, attorneys' fees can be nondischargeable under § 523(a)(5) when they relate to services concerning alimony, maintenance and support if those fees are incurred and payable as a result of agreement or entry of a court order. *See Schiller v. Cornish (In re Cornish)*, 529 F.2d 1363, 1365 (7th Cir.1976); *Pauley v. Spong (In re Spong)*, 661 F.2d 6, 9 (2d Cir. 1981); *Daulton v. Daulton (In re Daulton)*, 139 B.R. 708, 710-11 (Bankr.C.D.Ill.1992); *Fonnnemann*, 128 B.R. at 217; *Doss, Puchalski, Keenan & Bargiel, Ltd. v. Cockhill (In re Cockhill)*, 72 B.R. 339, 343 (Bankr.N.D.Ill.1987). The Seventh Circuit has stated that "[a]n order of a court of record mandating the payment of [attorneys'] fees as part of the alimony or child support judgment is required." *See In re Rios*, 901 F.2d 71, 72 (7th Cir.1990)(citing *Cornish*, 529 F.2d 1363); *see also Jones v. Jones (In re Jones)*, 9 F.3d 878, 882 (10th Cir.1993)(the term "support" includes court-ordered attorneys' fees); *Wisely v. Beattie (In re Beattie)*, 150 B.R. 699, 703 (Bankr.S.D.Ill.1993)(when attorneys' fees are awarded on a show cause petition to obtain compliance with a court's support order, they may be nondischargeable)

In the case before this Court, the state court awarded the PLAINTIFF child support, and the attorney fees follow that award. They are also in essence an award of support.

The DEFENDANT also argues that the attorney fees should be split. This Court is not aware of any authority that would permit it to split the state court awarded attorney fees. If the state court, based on the parties' then situations, had wanted to split the attorney fees, it could have done so.

The second issue is whether the attorney fees awarded in the three contempt proceedings are dischargeable. The DEFENDANT contends they are, arguing that as those awards run directly to the PLAINTIFF's attorney, the attorney, and not the PLAINTIFF, is the creditor.

Such a contention is contrary to the law. In *In re Beattie*, 150 B.R. 699 (Bkrtcy.S.D.Ill. 1993), the court held that attorney fees awarded in connection with the enforcement of support

obligations are also nondischargeable, stating:

Attorney fees incurred in the enforcement of a support obligation, like the obligation itself, are considered as maintenance or support for purposes of nondischargeability under § 523(a)(5). *See Jacobs v. Zimmeroff (In re Zimmeroff)*, 91 B.R. 839, 841 (Bankr.N.D.Ill.1988). Where, as here, attorney fees are awarded on a show cause petition to obtain compliance with a court's support order, an award of fees may be imposed upon a determination that the noncomplying spouse is financially better able to pay the fees than the spouse seeking enforcement of the support order. *Id.* An Illinois court is required to consider the relative financial resources of the parties in making a fee award and, in the absence of any evidence that the fee was based on other factors, will be presumed to have fulfilled its duty. *Id.*; *see* Ill.Rev.Stat., ch.40, par. 508(a) (1989).

The third issue is whether the PLAINTIFF can recover her attorney fees for the proceeding in this court. She cannot. Speaking to that same issue, the court in *Beattie* stated:

The plaintiff contends finally that she is entitled to recover her attorney fees in this dischargeability proceeding as fees incurred in the enforcement of a support obligation. This Court has previously ruled that, absent authorization in the Bankruptcy Code, it may not impose attorney fees in a dischargeability proceeding, although a party may seek recovery of such fees in the state court as fees incurred in the enforcement of a support order. *See Smith v. Barbre (In re Barbre)*, 91 B.R. 846, 849 (Bankr.S.D.Ill.1988). Accordingly, the Court denies the plaintiff's request for an award of attorney fees in this dischargeability proceeding.

This Opinion is to serve as findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

DATED: November 24, 1998.

WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE

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IN RE:)	
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RONALD E. EMIG,)	No. 98-80271
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Plaintiff,)	
vs.)	Adv. No. 98-8061
)	
RONALD E. EMIG,)	
Defendant.)	

ORDER

For the reasons stated in an Opinion filed this day, IT IS HEREBY ORDERED that:

1. The award of attorneys fees in the amount of \$2,400.00, under the judgment of dissolution is a nondischargeable obligation of the Debtor under § 523(a)(5);
2. The attorneys fees awarded in the contempt proceedings are also nondischargeable obligations of the Debtor under § 523(a)(5);
3. The Plaintiff's request for attorneys fees in this proceeding is DENIED.

Dated: November 24, 1998.

WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE

Copies to:
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Mr. Dick Williams
U.S. Trustee